

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION  
FRANKFORT, KENTUCKY

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AUG 30 2004

SIGMA GAS CORPORATION

Complainant

PUBLIC SERVICE  
COMMISSION

vs.

CASE NO. 04-00018

B.T.U. GAS COMPANY, INC.

Defendants

**REPLY BRIEF**  
**FOR THE DEFENDANT, B.T.U. GAS COMPANY, INC.**

Sigma Gas Corporation (hereinafter Sigma) filed this complaint with the PSC concerning gas customers B.T.U. Gas Company, Inc. (hereinafter B.T.U.) is supplying in Salyersville, Magoffin County, Kentucky. Sigma has the burden of establishing the events it alleges in its complaint. Sigma alleges its territory has been entered, even though Sigma does not have an exclusive franchise granted by the City of Salyersville. Sigma also alleges B.T.U. serving these customers requires a certificate of public convenience and necessity, because the extension is not in the usual course of business, and the extension creates wasteful duplication of facilities. Sigma has failed to meet its burden of proof.

B.T.U. gas lines were in the general area of all the customers added by B.T.U. The additional customers were given B.T.U. service by the laying of only 2,200 feet of additional line with a total construction cost of \$2,905.00.<sup>1</sup>

The case law cited by Sigma illustrates the point B.T.U. is attempting to make. There is a vast difference between East Kentucky Rural Electric

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<sup>1</sup> Transcript of hearing from 6-29-04, page 70.

Cooperative Corporation proposing to build two 20,000 kilowatt units, 597 miles of transmission line and borrowing \$12,265,000.00<sup>2</sup> or even Columbia Gas of Kentucky, Inc. proposing to spend \$261,825.00 to supply one industrial customer in an area Columbia did not have facilities in<sup>3</sup>; and B.T.U. spending \$2,905.00 to serve customers in an area where B.T.U. was already present. There is no wasteful duplication of facilities and these customers were added as an ordinary extension in the usual course of business.

Secondly, the City of Salyersville has not given Sigma an exclusive franchise to supply gas to the City of Salyersville. This lack of an exclusive franchise is notice of the legislative intent of the elected officials of Salyersville. They have noted competition is advantageous to the gas consumers of Salyersville. Sigma has no right to a competition-free-service area.<sup>4</sup> This filing before the PSC is Sigma's effort to receive the competition-free-service area Salyersville has not granted them.

Finally, this is not a wasteful duplication of services. The consumers in the Salyersville area have a choice of which gas company they purchase from and they naturally will use the supply of a company with significantly lower tariffs. The establishment of these lines has not caused B.T.U. to incur any debt and will not cause the rates of B.T.U. customers to rise.

The complaint of Sigma against B.T.U. should be dismissed.

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<sup>2</sup> Kentucky Utilities Co. vs. Public Service Commission, 252 S.W.2d 885 (1952).

<sup>3</sup> In re the matter of Columbia Gas of Kentucky, Inc., Case No. 96-015, before the Public Service Commission

<sup>4</sup> Public Service Commission of Kentucky v. The City of Paris, Ky., 299 S.W.2d 811 (1957) at 815 citing Tennessee Electric Power Company v. Tennessee Valley Authority, 306 U.S. 118, 59 S.Ct. 366, 370, 83 L.Ed. 543 and Public Service Commission v. Cities of Southgate, Ky., 268 S.W.2d 19, 21.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify a true and correct copy of the foregoing Reply Brief has been served by U.S. Mail, postage prepaid, this the 30th day of August, 2004 upon the following:

Hon. John N. Hughes  
124 W. Todd St.  
Frankfort, KY 40601

and hand delivered to the filing office of the PSC.



KAREN CHRISMAN